FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 453/ 2007
(Dagdu Raoji Ingle **Versus** Purushottam Onkar Kase)

Appeal District :
Application No. of 200
Writ petition

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. Khandalkar, Advocate for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 31st August, 2007.

Heard the learned counsel for the appellant.

The appellant is the original defendant. A suit was filed by the plaintiff for specific performance of contract of sale of the suit field. According to the plaintiff, the defendant agreed to sell the suit field to the plaintiff by an agreement dated 25.11.1999. The total consideration agreed between the parties was Rs.70,000/- and the plaintiff gave Rs.30,000/- to the defendant towards earnest amount. The sale-deed was to be executed within a period of eleven months from the execution of the agreement of sale. Since the defendant failed

to perform his part of the contract and failed to appear before the Sub Registrar in spite of issuance of the notice by the plaintiff, the plaintiff instituted the present suit.

The defendant resisted the suit of the plaintiff and pleaded that the plaintiff has obtained his thumb impression on a blank stamp paper. It was further pleaded by the defendant that he was in need of money for the medical expenses of his wife, and therefore, he took a loan of Rs.10,000/- from one Sahebrao Sabe and handed over the blank stamp papers with his thumb impressions affixed thereon. It is further pleaded that Sahebrao Sabe gave Rs.5,000/- to the defendant. In view of the aforesaid pleadings, it was pleaded by the defendant that the suit filed by the plaintiff was a frivolous one and was not tenable.

The trial Court framed the issues and held that the plaintiff succeeded in proving that the defendant had agreed to sell the suit land to the plaintiff for Rs.70,000/-. The Court further held that

the plaintiff proved that he had paid an amount of Rs.30,000/- towards earnest amount. The Court then held that the plaintiff had proved that he was ready and willing to perform his part of the contract and in fact the defendant had failed in proving that the plaintiff had obtained his thumb impression on blank stamp paper. The suit filed by the plaintiff was consequently decreed.

The defendant preferred an appeal against the judgment and decree passed by the trial Court on 13.08.2003. The findings of the trial Court were confirmed by the first appellate Court by the judgment dated 23.04.2007.

The findings recorded by both the Courts are based on a proper appreciation of the material evidence on record. In fact, the trial Court has exercised its discretion in granting the relief of specific performance by applying sound judicial principles. The first appellate Court has on a reappreciation of the evidence on record rightly confirmed the findings recorded by the trial Court.

Since no substantial question of law arises for consideration in this second appeal, the same is dismissed with no order as to costs.

JUDGE

APTE